

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

UNITED STATES of AMERICA) CRIMINAL FILE
) NO. 17-CR-234 (WMW)
)
) Devitt Courtroom
) Wednesday, May 31, 2017
BRANDON MARK BJERKNES) St. Paul, Minnesota
) 2:06 P.M.

AUDIO DIGITAL TRANSCRIPTION OF:

I N I T I A L A P P E A R A N C E

BEFORE THE HONORABLE JON T. HUSEBY
UNITED STATES MAGISTRATE JUDGE

A P P E A R A N C E S:

For the Government: **OFFICE OF THE U.S. ATTORNEY**
 By: ANGELA M. MUNOZ-KAPHING
 Assistant U.S. Attorney
 600 United States Courthouse
 300 South Fourth Street
 Minneapolis, Minnesota 55415

For the Defendant: **WOLD MORRISON LAW**
 By: PETER B. WOLD, ESQUIRE
 247 Third Avenue South
 Minneapolis, Minnesota 55415

AUDIO DISC TRANSCRIBED BY:

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1 (2:06 p.m.)

2 **P R O C E E D I N G S**

3 **IN OPEN COURT**

4 (Defendant present)

5 THE COURT: The next matter that I will call will
6 be the United States of America versus Brandon Mark
7 Bjerknes, Case Number 17-MJ-479, charges being violations of
8 18 U.S.C. 2251(a); 2252(a)(2); and 2422(b).

9 Again, Mr. Bjerknes, you were here during the
10 previous first appearance. I'm going to be going through
11 the same procedure with you again with this first
12 appearance. I'm going to advise you that you're entitled to
13 certain rights under the United States Constitution and the
14 laws of the United States. I want to make sure that you
15 understand why you're here. I will make a determination in
16 regards to detention and I will also advise you when your
17 next hearing will be.

18 Do you understand why you're here?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Okay. Counsel, I'm sorry. I keep
21 forgetting this. Could you please state your name for the
22 record.

23 MR. WOLD: Not a problem, Your Honor. Peter Wold
24 appearing as a panel lawyer on behalf of Mr. Bjerknes for
25 the purposes of this hearing.

1 THE COURT: Okay. And will you represent him as
2 the proceedings -- for the proceedings here?

3 MR. WOLD: One way or another I will, I believe
4 so, Your Honor, if --

5 THE COURT: Okay. So there's no need to appoint a
6 federal public defender at this point?

7 MR. WOLD: I think we need to do that, yes.

8 THE COURT: Okay. And counsel for the United
9 States Government?

10 MS. MUNOZ-KAPHING: Thank you, Your Honor.

11 Angela Munoz-Kaphing. I'm here on behalf of the
12 United States and we would request that that inquiry happen
13 and the panel appointment be made for purposes of today's
14 hearing.

15 THE COURT: Okay.

16 MS. MUNOZ-KAPHING: Thank you.

17 THE COURT: Okay.

18 So, Mr. Bjerknes, in regard to your rights, you
19 have the right to remain silent and not to answer the
20 questions of any law-enforcement officer whatsoever. You
21 can give up your right to remain silent and answer questions
22 if you want to. The choice is yours.

23 If you do give up your right to remain silent and
24 if you do answer questions, anything you say can and will be
25 used against you in court.

1 You also have the right to be represented by an
2 attorney whenever you are being questioned, and if you
3 cannot afford an attorney, the Court will appoint one to
4 represent you free of charge.

5 You have these rights at all times and you can
6 assert them at any time.

7 Do you understand that you can assert these rights
8 at any time?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Okay. Mr. Bjerknes, have you been
11 given a copy of the complaint?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: And has your attorney gone over that
14 with you?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: So you understand why you're here
17 today?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Okay. To the best of your ability,
20 can you raise your right hand.

21 **BRANDON MARK BJERKNES, DEFENDANT, SWORN**

22 THE DEFENDANT : Yes.

23 THE COURT: Okay. Are you currently employed?

24 THE DEFENDANT: I am.

25 THE COURT: Okay. And where are you employed?

1 THE DEFENDANT: I'm self-employed. I own a
2 graphic design, screen printing business.

3 THE COURT: Okay. And how much money do you make?

4 THE DEFENDANT: About 1200 a month. It
5 fluctuates, you know, job to job, but . . .

6 THE COURT: And do you have income -- are you
7 currently married?

8 THE DEFENDANT: Yes, I am.

9 THE COURT: Okay. And does your wife have income?

10 THE DEFENDANT: Yes, she does.

11 THE COURT: And how much does she make?

12 THE DEFENDANT: She makes about 2800 a month.

13 THE COURT: Okay. So approximately \$4,000 a month
14 in income?

15 THE DEFENDANT: Yes.

16 THE COURT: Between yours and your wife's?

17 THE DEFENDANT: Yes.

18 THE COURT: Okay. Do you own any real estate?

19 THE DEFENDANT: We own a home we're, you know,
20 paying a mortgage on.

21 THE COURT: Okay. Do you have any money in the
22 bank?

23 THE DEFENDANT: I do have some money in the bank
24 right now. I also have some credit card debt that --

25 THE COURT: Okay.

1 THE DEFENDANT: -- which it would -- should cover,
2 I guess.

3 THE COURT: Do you own any cars, trucks or other
4 vehicles?

5 THE DEFENDANT: My wife and I each have a vehicle
6 that we're paying on. We have monthly payments for each.

7 THE COURT: Do you have any cash?

8 THE DEFENDANT: About a thousand dollars.

9 THE COURT: Any other sources of income?

10 THE DEFENDANT: No. No, Your Honor.

11 THE COURT: Okay. Does anybody owe you money?

12 THE DEFENDANT: No.

13 THE COURT: Are you planning on hiring an
14 attorney?

15 THE DEFENDANT: I would need to be represented, I
16 guess.

17 THE COURT: Right. I'm making the inquiry to see
18 if you have the necessary resources to hire an attorney, and
19 what I'm hearing from you is that you've got some -- you've
20 got some funds and you may be able to hire an attorney.

21 THE DEFENDANT: Okay.

22 THE COURT: I think what I'll do for today's
23 purposes, I will appoint -- I will appoint the federal
24 public defender to represent you. At some point that may
25 change and you may be -- you know, be required to foot the

1 bill at that point.

2 THE DEFENDANT: Okay.

3 THE COURT: Counsel, were you going to say
4 something, or --

5 MR. WOLD: I wasn't, Your Honor. I know
6 Mr. Bjerknes because, as the Court's probably aware, has
7 been charged in Beltrami County since the 1st of the year,
8 and in those state court matters I've represented him and
9 that's where his money went, so that's -- with the rigors of
10 a federal case, I -- I suggested that he attempt to get
11 public defender qualification, because he won't be able to
12 afford that, frankly.

13 THE COURT: Yes. So I will -- again, I will
14 appoint a federal public defender at this point.

15 In regard to detention pending the next hearing,
16 counsel for the United States Government, do you have a
17 position on that?

18 MS. MUNOZ-KAPHING: Yes, Your Honor. The
19 Government is seeking detention in this case and requests a
20 continuance for that hearing in order to prepare.

21 THE COURT: Okay. Counsel?

22 MR. WOLD: Your Honor, I've had the benefit of
23 reviewing the pretrial report. Obviously I think there are
24 certainly conditions that will guarantee, one, the safety of
25 the community and, two, also his reappearance.

1 I can advise the Court that since the 1st of --
2 basically the 1st of January, I've been with Mr. Bjerknes.
3 He's been obviously aware of the charges that have come
4 through Beltrami County. He was released after posting a
5 bond with conditions there that he's complied with
6 throughout that term.

7 He was then -- an amended complaint came in
8 Beltrami County I think it was the 8th of May about, and
9 again we appeared before the judge there, who reviewed the
10 conditions he abided by and so forth after bail was first
11 set after the first complaint and found that he was in full
12 compliance. The County Attorney there, based on that, did
13 not ask for detention at that time and just have those
14 conditions continue. He's abided by those since then.

15 I will advise the Court that -- I believe the
16 County Attorney is David Frank -- advised me at that hearing
17 that the U.S. Attorney in Minneapolis was looking at this
18 case for potential federal charges. I of course advised
19 Mr. Bjerknes of that. He didn't run. He didn't violate any
20 conditions after knowledge that he may be charged with more
21 serious federal crimes.

22 So based on that history and his record and
23 background and family ties -- he's married with children.
24 His parents live nearby, Bemidji and Grand Forks.

25 I'll also advise the Court that since that time

1 Mr. Bjerknes has engaged in psychosexual counseling with a
2 doctor in Minneapolis. He had his first consult with that
3 doctor last Thursday and has committed to a weekly schedule
4 visiting with that counselor and therapist.

5 Based on all of that, Your Honor, I think there
6 are clearly conditions that would maintain the safety of the
7 public and guarantee -- or at least guarantee that
8 Mr. Bjerknes is back in court. And we would concur with the
9 recommendations of the pretrial officer here, Your Honor,
10 which I think recommends halfway house placement. And I can
11 advise the Court that the pretrial officer -- Mr. Bjerknes
12 neglected to advise them of the counseling he has ongoing
13 too, so I think their report would have been even stronger
14 in favor of not detaining Mr. Bjerknes.

15 So for those reasons, Your Honor, we would ask the
16 Court to release Mr. Bjerknes with the conditions
17 recommended by the pretrial officer.

18 THE COURT: Counsel, would you like to respond?

19 MS. MUNOZ-KAPHING: I would, Your Honor.

20 Your Honor, I've heard Mr. Wold's arguments. The
21 Government has moved for a detention hearing and those
22 arguments can be heard at the detention hearing.

23 To the extent that Mr. Bjerknes is contesting
24 probable cause in this matter, we also need to have a
25 preliminary hearing, and at that preliminary and combined

1 detention hearing, the Government will present a witness and
2 evidence in support of its motion for detention.

3 Under Section 3142(f)(1)(E), "The judicial officer
4 shall hold a hearing to determine whether any condition or
5 combination of conditions exist" in several situations, and
6 (f)(1)(E), it's specifically listed: "any felony that is
7 not otherwise a crime of violence that involves a minor
8 victim."

9 There are four charges in the criminal complaint
10 that's been filed against Mr. Bjerknes. Three of those
11 involve, as charged, a minor victim. The second count,
12 which is distribution of child pornography, Mr. Bjerknes
13 distributed child pornography to a minor. There are minors
14 in every inch of this case, Your Honor, and that's why the
15 Government has requested a detention hearing and a
16 continuance to prepare and make sure that there is a witness
17 here in order to establish probable cause to the extent
18 Mr. Bjerknes contests that and to establish why detention is
19 appropriate.

20 Thank you, Your Honor.

21 THE COURT: Anything further, Counsel?

22 MR. WOLD: No, Your Honor.

23 THE COURT: Okay. At this point I have heard the
24 arguments from counsel for the Government and counsel for
25 Mr. Bjerknes and I will order temporary detention pending

1 the next hearing, which will be held on June 5th, 2017 at
2 10 o'clock a.m., and that will be before United States
3 Magistrate Judge Hildy Bowbeer, and that will be in
4 Courtroom 6B, and that will be at this courthouse in
5 St. Paul. That will be for a detention hearing as well as a
6 preliminary hearing.

7 Anything further, counsel?

8 MR. WOLD: No, Your Honor.

9 MS. MUNOZ-KAPHING: Nothing from the Government,
10 Your Honor. Thank you.

11 THE COURT: Okay. If nothing further, we'll be in
12 recess. Thank you.

13 (Proceedings concluded at 2:18 p.m.)

14 * * * *

C E R T I F I C A T E

I, **TIMOTHY J. WILLETTE**, Official Court Reporter for the United States District Court, do hereby certify that the foregoing pages are a true and accurate transcription from an audio digital recording of proceedings taken in the aforementioned matter, to the best of my skill and ability.

/s/ Timothy J. Willette

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